LIBRARY
SUPREME COURT. U. S.

Office-Supreme Court, U.S.
FILED
DEC 21 1967
JOHN F. DAVIS, CLERK

No. 70

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

ALITALIA-LINEE AEREE ITALIANE, S. p. A.,
Petitioner,

v.

JOHN LISI, ET AL., *Respondents.*

JOINT BRIEF OF THE AIR TRANSPORT ASSOCIATION OF AMERICA AND THE INTERNATIONAL AIR TRANSPORT ASSOCIATION AS AMICI CURIAE

JOHN E. STEPHEN
JOSEPH F. HEALY, JR.
1000 Connecticut Ave., N. W.
Washington, D. C. 20036
Attorneys for the Air Transport Association of America

HAROLD L. WARNER, JR.
25 Broadway
New York, N. Y. 10004
Attorney for the International Air Transport Association

J. G. THOMKA GAZDIK
EDWIN O. BAILEY
CARL S. ROWE
PAUL G. PENNOYER, JR.
Of Counsel.

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

INDEX

	Page
The Nature of ATA's and IATA's Interest	2
The Proceedings Below	4
Summary of Argument	5
Argument	
I. The Warsaw Convention of 1929 Does Not Require the Airline Ticket to Contain Notice to the Passenger of the Provisions of the Convention Which Exclude or Limit Liability	6
II. Even the Hague Protocol, While Not Here Applicable, Would Impose No Sanction in This Case	10
III. Alitalia's Ticket Conformed to the Warsaw Convention and to All Requirements of the Civil Aeronautics Board	13
Conclusion	16
Certificate of Service	17
Appendices	1a

CITATIONS

CASES:

Adams Express Co. v. *Croninger,* 226 U.S. 491 (1913)	16
Boston and Maine Railroad v. *Hooker,* 233 U.S. 97 (1914)	16
IATA Traffic Conference Resolutions, 10 C.A.B. 783 (1949)	14
Lichten v. *Eastern Air Lines,* 189 F. 2d 939 (2d Cir., 1951)	16

Page

Lisi v. *Alitalia-Linee Aeree Italiane*, 370 F. 2d 508 (2d Cir., 1966) 5, 7, 11, 13

Lisi v. *Alitalia-Linee Aeree Italiane*, 253 F. Supp. 237 (S.D.N.Y. 1966) 5, 6, 10, 11, 12, 13, 14

Maximov v. *United States*, 373 U.S. 49 (1963) 10

Mertens v. *Flying Tiger Line*, 341 F. 2d 851 (2d Cir., 1965) 8

NLRB v. *Allis Chalmers Mfg. Co.*, 388 U.S. 175 (1967) 8

Pan American World Airways, et al. Conditions of Carriage, 24 C.A.B. 575 (1957) 3, 11, 14

The Amiable Isabella, 19 U.S. (6 Wheat.) 1 (1821) 9

Vogelsang v. *Delta Air Lines*, 302 F. 2d 709 (2d Cir., 1962) 16

STATUTES, TREATIES, REGULATIONS:

Act of the Parliament of Canada, 9-10 George VI (1945) 2

Civil Aeronautics Board, *Aeronautical Statutes and Related Material* (1967) 10

Economic Regulations of the Civil Aeronautics Board, § 221.171 ..... 15, 16

Federal Aviation Act of 1958, 72 Stat. 770, 49 U.S.C. § 1382 3

28 F.R. 3281, 3282 (1963) 15

28 F.R. 11775, 11777 (1963) 15

31 F.R. 7302 (1966) 4

Warsaw Convention, 49 Stat. 3000; T.S. 876:

Generally ..... *passim*

Article 3 ..... 4, 5, 7, 8, 9, 11

Article 4 ..... 7, 9

Article 9 ..... 7, 9

Article 22 ..... 4, 6, 7, 11

MISCELLANEOUS:

Page

Apter, *Shiplines Need A World Organization,* Travel Agent, April 10, 1964 3

Alitalia-Linee Aeree Italiane, International Local and Joint Passenger Rules Tariff No. PR-5, C.A.B. No. 6 15

Drion, *Limitation of Liabilities in International Air Law* (1945) 9

Goedhuis, *National Airlegislations and the Warsaw Convention* (1937) 9

International Conference on Private Air Law, The Hague, September 1955, ICAO Doc. 7686-LC/140 11, 12

Lowenfeld and Mendelsohn, *The United States and the Warsaw Convention,* 80 Harv. L. Rev. 497 (1967) 4, 5, 13

Remarks of Chairman Charles S. Murphy before the World Congress, International Federation of Travel Agents 2, 3

Shawcross and Beaumont, *Air Law* (2d Ed. 1951) 9

Ilème Conférence Internationale de Droit Privé Aérien, ICAO Doc.: 7838 8

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 70

ALITALIA-LINEE AEREE ITALIANE, S. p. A.,
Petitioner,

v.

JOHN LISI, ET AL., *Respondents.*

JOINT BRIEF OF THE AIR TRANSPORT ASSOCIATION OF AMERICA AND THE INTERNATIONAL AIR TRANSPORT ASSOCIATION AS AMICI CURIAE

The Air Transport Association of America ("ATA") and the International Air Transport Association ("IATA") respectfully submit this joint brief as *amici curiae* in support of the petitioner in this matter.

In accordance with the provisions of Rule 42.2 of the Court's Rules, written consent to the filing of such a joint brief as *amici curiae* has been requested and

obtained from both the petitioner and the respondents herein. Copies of the letters granting this consent are being submitted to the Clerk of the Court concurrently herewith.

The Nature of ATA's and IATA's Interest

ATA is a voluntary trade and service organization whose membership comprises virtually all of the scheduled, federally-certificated airlines of the United States. The names of the airline members of ATA are set forth in Appendix A to this brief. IATA is a body politic incorporated in 1945 by special Act of Parliament of Canada, 9-10 George VI, as an organization of the world's scheduled airlines. IATA has a membership of one hundred airlines from over sixty nations of the world. The names of the IATA member airlines are set forth in Appendix B.

The airline members of both associations have a substantial interest in the matters at issue in this case. All of the members of ATA and IATA participate in the carriage of international air traffic—over their own international routes, through interline arrangements with other carriers, or a combination of both.

As a result of collective arrangements by the world's airlines, a passenger dealing with one carrier can now move by air on a single ticket between almost any pair of points anywhere in the world. As the Chairman of the Civil Aeronautics Board has observed:

> "Today, a carrier's ticket stock is freely accepted around the world; baggage allowances are the same in Bangkok as they are in France or Greece; the carriers have a clearing house through which settlement of interline accounts exceeded 2.8 billion dollars last year . . . .

> "This uniformity is of immense value to the seasoned, as well as the unseasoned, traveler. He can now move between many lands with an ease and smoothness which is truly marvelous."[1]

The key to the airlines' achievement in thus serving the convenience of the traveling public is a comprehensive system of uniform standards, practices and procedures. At the heart of this system is the standardized airline passenger ticket under consideration in this case. The form of this ticket has been approved by the Civil Aeronautics Board, the appropriate regulatory agency of the United States Government, pursuant to its powers under Section 412 of the Federal Aviation Act of 1958, 72 Stat. 770, 48 U.S.C. § 1382. *Pan American World Airways, et al. Conditions of Carriage,* 24 C.A.B. 575 (1957).

In reliance upon the governmental approval and the worldwide acceptance of the standard form of passenger ticket under consideration herein, the ATA and IATA member airlines issue such tickets for the online and interline carriage of passengers over their respective routes, as well as honor these tickets when issued by other carriers. This standard ticket has thus become an accepted international document and over ninety per cent of all scheduled international air traffic moves thereunder.

This standard form of ticket is being honored and used by the world's airlines on the premise that trans-

---

[1] Remarks of Chairman Charles S. Murphy before the World Congress, International Federation of Travel Agents, Athens, Greece, November 14, 1966, p. 7. For a comparative analysis of the difficulties encountered by reason of the necessity for ship passengers to deal separately with each steamship company, see Apter, *Shiplines Need A World Organization,* Travel Agent, April 10, 1964.

portation furnished thereunder which is international under the terms of the Warsaw Convention will be governed by this international treaty. Thus, the construction to be afforded the Warsaw Convention in this case is a matter of prime concern to ATA, IATA and their respective member airlines.

The Proceedings Below

Shortly after takeoff from Shannon, Ireland, while en route from Rome to New York on February 26, 1960, one of Alitalia's aircraft crashed. Each of the passengers aboard was traveling pursuant to a passenger ticket conforming to the requirements of the Warsaw Convention.[2] Most of the tickets had been purchased outside the United States.

Under ordinary circumstances Alitalia's liability in these actions for wrongful death and personal injuries would be limited by Article 22 of the Convention to the sum of 125,000 francs [$8,291.87] for each passenger.[3]

---

[2] Article 3 of the Warsaw Convention (49 Stat. 3015; T.S. 876), adhered to by the United States effective October 29, 1934, provides that the passenger ticket shall contain (a) the place and date of issue; (b) the place of departure and destination; (c) the agreed stopping places; (d) the name and address of the carrier or carriers and (e) "a statement that the transportation is subject to the rules relating to liability established by this convention."

[3] 49 Stat. 3019. By reason of the extraordinary efforts of Mr. Knut Hammarskjold, Director General of IATA, an agreement constituting a special contract under Article 22(1) of the Convention has since been effected between 97 international airlines under which, as approved by the Civil Aeronautics Board effective May 16, 1966, liability on flights serving the United States is increased to proven damages not to exceed $75,000, inclusive of legal fees and costs, and liability up to this limit does not depend on negligence on the part of the carrier. 31 F.R. 7302 (1966). For an account of IATA's part in effecting this agreement see Lowenfeld and Mendelsohn, *The United States and the Warsaw Convention*, 80 Harv. L. Rev. 497, 586-596 (1967).

The District Court, although according to one authority "realizing that [it] was breaking a chain of hundreds of precedents,"[4] held that the statements in the tickets referring to the Convention were in type so small as to be "virtually invisible" and that petitioner had therefore failed to comply with Article 3(1)(e) of the Convention. *Lisi* v. *Alitalia-Linee Aeree Italiane,* 253 F. Supp. 237, 243 (S.D.N.Y. 1966). Accordingly, the District Court dismissed Alitalia's affirmative defense that its liability was limited under Article 22 of the Convention.

The Court of Appeals affirmed, Moore, J. dissenting. *Lisi* v. *Alitalia-Linee Aeree Italiane,* 370 F. 2d 508 (2d Cir. 1966). Ostensibly the majority ruled that "a jury could not reasonably have found that the tickets and baggage checks gave the passengers the required notice." Id. at 514. In actuality the majority simply did not approve the terms of the Convention, labeling them as "arbitrary limitations on liability—which have been severely and repeatedly criticized. . . ." Id. at 512.

Clearly, as the dissent states, "The majority do not approve of the terms of the treaty and, therefore, by judicial fiat they rewrite it." Id. at 515.

Summary of Argument

Although the Warsaw Convention provides that the passenger ticket shall contain "A statement that the transportation is subject to the rules relating to liability established by this convention", the omission of such statement does not affect the existence or validity of the contract of transportation. While *notice* thus need

---

[4] Lowenfeld and Mendelsohn, *supra,* 80 Harv. L. Rev. at 512, n. 64.

not be given to passengers of the rules relating to liability established by the Convention, Alitalia's ticket contained such a statement and called particular attention to it on the cover of the ticket.

It was not until the Warsaw Convention was amended by the Hague Protocol, effective August 1, 1963, that *notice* to passengers was first required. Although there was no need for Alitalia to give such notice in this case, such notice, both in English and Italian, was contained in Alitalia's passenger ticket prominently positioned at the bottom of each passenger flight coupon.

The form of passenger ticket used by Alitalia was specifically approved by the Civil Aeronautics Board. And Alitalia's tariff on file with the Civil Aeronautics Board contained a provision advising as to rules relating to liability established by the Warsaw Convention. Thus Alitalia fully complied with all requirements of the Warsaw Convention and the Civil Aeronautics Board in this case.

ARGUMENT

I.

The Warsaw Convention of 1929 Does Not Require the Airline Ticket to Contain Notice to the Passenger of the Provisions of the Convention Which Exclude or Limit Liability.

The district court's dismissal of Alitalia's affirmative defense that its liability was limited under Article 22 of the Convention was premised on the ground that "compliance with the Convention requires . . . delivery of a ticket and check which notify the passenger that the provisions of the Convention which exclude or limit liability are applicable."[5] In affirming, the Court of

[5] 253 F.Supp. at 239.

Appeals agreed "that a jury could not reasonably have found that the tickets and baggage checks gave the passengers the required notice."[6]

The difficulty with the decisions below is that both courts have proceeded to rewrite the Warsaw Convention of 1929. It is plain that there is no requirement in the Warsaw Convention which makes the partial defense of limited liability under Article 22 of the Convention unavailable if the passenger ticket does not contain a statement that "transportation is subject to the rules relating to liability established by this Convention."

While Articles 4 and 9 of the Warsaw Convention impose such a sanction[7] on the carrier for failure to include in the baggage check or air waybill a statement that the transportation is subject to the rules relating to liability established by the Convention, no such sanction is imposed with respect to the passenger ticket under Article 3.

Article 3 of the Warsaw Convention is explicit. "The absence, irregularity, or loss of the passenger ticket shall not affect the existence or the validity of the contract of transportation, which shall none the less be subject to the rules of this convention." It is only where the carrier "accepts a passenger without a passenger ticket having been delivered" that the carrier "shall not be entitled to avail himself of those provisions of this convention which exclude or limit his liability."

---

[6] 370 F.2d at 514.

[7] The carrier "shall not be entitled to avail himself of those provisions of the convention which exclude or limit his liability."

In his Memorandum for the United States as Amicus Curiae, filed herein in June, 1967, the Solicitor General stated, at page 7, "To be sure, support for petitioner's position can be derived from a literal reading of the Convention."

Since the words of the Convention are plain, resort to its "legislative history" should be unnecessary. *NLRB v. Allis Chalmers Mfg. Co.*, 388 U.S. 175, 178-180 (1967).

Had the courts below referred to this legislative history [8] they would have found that the omission from Article 3 of any sanction, save for failure to deliver a ticket, was deliberate and fully considered.

In May, 1928, C.I.T.E.J.A.[9] had proposed that Article 3(2) of the Warsaw Convention contain a sanction which would prohibit a carrier from availing itself of the limitations of liability if the passenger ticket omitted the statement that transportation is subject to the rules relating to liability established by the Convention.[10] The proposal of C.I.T.E.J.A. was rejected at the Warsaw Conference. Article 3(2) as finally adopted imposes no sanction upon the carrier in the event the ticket fails to contain the particulars listed in Article 3(1).

---

[8] In *Mertens* v. *Flying Tiger Line*, 341 F.2d 851, 853-854 (2 Cir., 1965), certiorari denied 382 U.S. 816 (1965), the court found the negotiations surrounding the adoption of the Hague Protocol to the Warsaw Convention determinative of the question there in issue, i.e., whether military charter flights are covered by the Convention.

[9] Comité International Technique d'Experts Juridiques Aériens.

[10] IIème Conférence Internationale de Droit Privé Aérien, ICAO Doc.: 7838, pp. 167-168. The French text of this document is set forth in Appendix C.

"Both the wording of Article 3(2), when compared with that of Articles 4(4) and 9, and the history of the provision make it abundantly clear that the framers of the Convention meant to impose the sanction with respect to the ticket only in case of a complete failure to deliver a ticket, and did not want to attach the sanction to the omission of the prescribed particulars." Drion, *Limitation of Liabilities in International Air Law* (1954) ¶ 251. See also, Geodhuis, *National Air-legislations and the Warsaw Convention* (1937), pp. 156-157; Shawcross and Beaumont, *Air Law*, ¶ 406 (2d Ed. 1951).

The courts below have rewritten the Warsaw Convention to add a sanction not contained in the Convention itself and one specifically rejected by the drafters of the Convention. If a treaty is to be rewritten, the revision should be by the sovereign governments involved and not by the courts of a single country. This is exactly the procedure that now has been followed here. The Warsaw Convention has been rewritten by the Hague Protocol to add by treaty amendment the very sanction which the courts below would enact judicially. The fact that the Hague Protocol has not yet been ratified by the United States and therefore is not applicable to transportation to and from the United States, and, for that matter, was not in effect anywhere at the time of the accident, merely emphasizes that this procedure is the only proper one to follow and that the Warsaw Convention cannot be amended by the decision of the courts of one of the more than 70 nations now parties to the Warsaw Convention.

As stated by this Court in *The Amiable Isabella*, 19 U.S. (6 Wheat.) 1, 7 (1821):

> "We are not at liberty to dispense with any of the conditions or requirements of the treaty, or to

take away any qualification or integral part of any stipulation, upon any notion of equity or general convenience, or substantial justice. The terms which the parties have chosen to fix, the forms which they have prescribed, and the circumstances under which they are to have operation, rest in the exclusive discretion of the contracting parties, and whether they belong to the essence or the model parts of the treaty, equally give the rule to judicial tribunals. The same powers which have contracted, are alone competent to change or dispense with any formality."

And as most recently stated by this Court in *Maximov* v. *United States*, 373 U.S. 49, 54 (1963):

"... it is particularly inappropriate for a court to sanction a deviation from the clear import of a solemn treaty between this Nation and a foreign sovereign, when, as here, there is no indication that application of the words of the treaty according to their obvious meaning effects a result inconsistent with the intent or expectations of its signatories."

II.

Even the Hague Protocol, While Not Here Applicable, Would Impose No Sanction in This Case.

While the Hague Protocol does not apply in the present case,[11] the courts below have attempted to decide this case as though the Hague Protocol applies, holding that the "Convention requires . . . a ticket . . . which notif[ies] the passenger that the provisions of the Convention which exclude or limit liability

[11] The Hague Protocol did not become effective until August 1, 1963, more than 3 years after the accident in this case. Furthermore, the Protocol has not yet been ratified by the United States. *Aeronautical Statutes and Related Material*, Revised May 1, 1967, Civil Aeronautics Board, p. 282.

are applicable." 253 F. Supp. at 239. The Hague Protocol, but not the Warsaw Convention, does contain such a requirement. Even if the Hague Protocol were applicable, however, the courts below erred in construing Article 3 of the Convention as amended by the Hague Protocol.

It was not until the Hague Conference in 1955 that Article 3(2) of the Warsaw Convention was amended to provide that "If the ticket does not include the notice required by paragraph 1(c) of this Article, the carrier shall not be entitled to avail himself of the provisions of Article 22." [12] The amendment so adopted, save for minor changes in drafting, was that proposed by the United States.[13]

The courts below would hold that Alitalia failed to give the required notice because the notice was " 'ineffectively positioned, diminutively sized, and unemphasized by bold face type, contrasting color, or anything else.' " [14]

Yet the tickets in this case admittedly contain the notice prescribed by the Hague Protocol. This "much clearer" [15] notice was not buried "in a thicket of 'Conditions of Contract'" or "ineffectively positioned." [16] On the contrary, this notice was prominently positioned at the bottom of *each* passenger flight coupon. Fur-

---

[12] Appendix D sets forth a comparison of the provisions of Articles 3, 4 and 22 of the Warsaw Convention with the amendments to these provisions made by the Hague Protocol.

[13] Volume 2, Minutes, International Conference on Private Air Law, The Hague, September 1955, ICAO Doc. 7686-LC/140 p. 243.

[14] 370 F.2d at 514; citing 253 F.Supp. at 243.

[15] 24 C.A.B. 575, 577.

[16] 253 F.Supp. at 243.

thermore, this notice was set forth *twice*, once in Italian and once in English.[17] And the cover of each ticket in two languages and in bold face type clearly emphasized that the passenger should "carefully examine this ticket."

But the courts below rewrite even the Hague Protocol when they would require that the notice be so emphasized.

Here again the legislative history of the Hague Protocol is clear. For years the standard form of IATA ticket had been printed in small type because of the number of provisions deemed requisite in the conditions of carriage by the applicability of the Convention in over 70 different countries. Aware of the form and size of type employed in the IATA ticket, the United States representative at the Hague Protocol specifically proposed that the notice be printed in contrasting color and that *the heading* of the notice regarding the applicability of the Convention "should be set out in letters of not less than five millimeters high."[18] The Conference, however, specifically rejected this proposal.[19]

The courts below would rewrite the Convention to make mandatory a larger type size of the statement specified in Article 3 of the Hague Protocol. Yet the

---

[17] The tickets of many foreign carriers are printed solely in foreign language. In the case below, the Italian plaintiff attempted to argue that Alitalia's ticket, sold in Algiers, should have been printed in Arabic although admittedly the plaintiff could not read Arabic. 253 F. Supp. at 243 n. 7.

[18] Volume 1, Minutes, International Conference on Private Air Law, The Hague, September 1955, ICAO Doc. 7686-LC/140, p. 124.

[19] *Id.* at p. 124.

executive branch of the United States Government was unsuccessful in its attempt so to amend the Convention at the Hague Conference in September 1955. Instead, the parties to the Warsaw Convention endorsed continuation of the type size long employed in the standard form of IATA ticket.

It is no wonder that the decision below is viewed as "breaking a chain of hundreds of precedents."[20] There is no basis for this decision. Clearly, as the dissent in the Court of Appeals states, "The majority do not approve of the terms of the treaty and, therefore, by judicial fiat they rewrite it." 370 F. 2d at 515.

III.

Alitalia's Ticket Conformed to the Warsaw Convention and to All Requirements of the Civil Aeronautics Board

Although, as shown in Point I, the Convention is applicable without regard to what provisions were on the ticket, Alitalia's ticket did contain in Condition 2 of its Conditions of Contract the statement specified in Article 3(1) of the Warsaw Convention of 1929 that "Carriage hereunder is subject to the rules and limitations relating to liability established by the Convention for the Unification of Certain Rules relating to International Carriage by Air signed at Warsaw, October 12, 1929." 253 F. Supp. at 241.

In addition, each flight coupon of Alitalia's ticket contained the notice specified in Article 3(1) of the Warsaw Convention as amended by the Hague Protocol of 1955 that "If the passenger's journey involves

---

[20] Lowenfeld and Mendelsohn, *The United States and the Warsaw Convention*, 80 Harv.L.Rev. 497, 512, n. 64.

an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable and the Convention governs and in most cases limits the liability of carriers for death or personal injury and in respect of loss of or damage to baggage." 253 F. Supp. at 242.

The form of IATA standard passenger ticket utilized by Alitalia in this case had been the subject of almost constant surveillance by the Civil Aeronautics Board since 1949 when the form of uniform passenger ticket and the conditions of contract to be printed thereon were first approved by the Civil Aeronautics Board. *IATA Traffic Conference Resolutions,* 10 C.A.B. 783 (1949).

On February 12, 1957 the Civil Aeronautics Board approved the standard form of IATA ticket stating:

> "The revision to the form of passenger ticket provides for changing the notice of applicability of the Convention which is required by the Convention in the form specified in the Protocol to the convention adopted at The Hague. The new form is much clearer and informative than the one now found on the ticket." 24 C.A.B. 575, 577.

This approval of the Civil Aeronautics Board was issued following a meeting with members of IATA on January 17, 1955 and "a large number of further meetings with the IATA members or their representatives . . . to develop a resolution on the conditions of contract to be placed in the ticket which would meet the objections raised by the Board in its order No. E-8543" of August 5, 1954. 24 C.A.B. at 576.

At no time during the Board's investigation of over two years did the Board require that the size of

type in the passenger ticket under consideration be changed.[21]

Indeed it was not until April 1, 1963 that the Board first suggested that "the type in which the notice is currently printed on the ticket is too small to alert the passengers to the importance of the matter." 28 F.R. 3281, 3282 (1963). And it was not until October 31, 1963, when the Board amended Part 221 of its Economic Regulations, effective February 1, 1964, that the Board first required that each air carrier and foreign air carrier availing itself of the limitation on liability to passengers provided by the Warsaw Convention utilize a special statement to be printed "in type at least as large as ten point modern type and in ink contrasting with the stock on (1) each ticket; (2) a piece of paper either placed in the ticket envelope with the ticket or attached to the ticket; or (3) on the ticket envelope." 28 F.R. 11775, 11777 (1963).

Finally, pursuant to the reference in its tickets so approved by the Civil Aeronautics Board, Alitalia filed its tariff with the Civil Aeronautics Board setting forth the application of the Warsaw Convention to international transportation performed thereunder by Alitalia.[22] This tariff, which was required to be main-

---

[21] It cannot be asserted that the CAB was unaware of the form and size of type used in the standard IATA passenger ticket. Appendix E contains a reprint from the CAB's files of the pertinent pages of the IATA agreements which were before the Board at the time, Agreement Nos. CAB 10559 and 7648. Included therein were exact reproductions of the actual form of ticket used (see Attachments "A" and "B" to Resolution 275, pages 297 and 298).

[22] Alitalia-Linee Aeree Italiane, International Local and Joint Passenger Rules Tariff No. PR-5, C.A.B. No. 6, Original Page 22, effective April 1, 1959, cancelled effective May 15, 1964 by 1st Revised Page 22.

tained at each of Alitalia's stations or offices where tickets for passenger transportation were sold,[23] constituted still further notice to the plaintiffs herein. In fact, the Warsaw Convention rules relating to liability and the tariff so filed became a part of the contract of carriage between Alitalia and its passengers.[24]

CONCLUSION

The dismissal below of the affirmative defenses based on the articles of the Warsaw Convention which limit an airline's liability to its passengers was erroneous and should be reversed.

Respectfully submitted,

JOHN E. STEPHEN
JOSEPH F. HEALY, JR.
1000 Connecticut Ave., N. W.
Washington, D. C. 20036
Attorneys for the Air Transport Association of America

HAROLD L. WARNER, JR.
25 Broadway
New York, N. Y. 10004
Attorney for the International Air Transport Association

J. G. THOMKA GAZDIK
EDWIN O. BAILEY
CARL S. ROWE
PAUL G. PENNOYER, JR.
Of Counsel.

---

[23] § 221.171, Economic Regulations of the Civil Aeronautics Board, as amended by Regulation No. ER-278, effective August 8, 1959.

[24] *Boston and Maine Railroad* v. *Hooker*, 233 U.S. 97 (1914); *Adams Express Co.* v. *Croninger*, 226 U.S. 491 (1913); *Vogelsang* v. *Delta Air Lines*, 302 F. 2d 709 (2d Cir., 1962), *cert. den.* 371 U.S. 826 (1962); *Lichten* v. *Eastern Airlines*, 189 F. 2d 939 (2d Cir., 1951).

Certificate of Service

I, Joseph F. Healy, Jr., an attorney for the Air Transport Association of America and a member of the bar of the Supreme Court of the United States, hereby certify that on the 21st day of December, 1967, I served the foregoing Joint Brief of the Air Transport Association of America and the International Air Transport Association as Amici Curiae upon each of the parties, by mailing copies thereof in properly addressed envelopes with first class postage prepaid, to their respective atorneys of record, as follows:

Austin P. Magner, Esquire
George N. Tompkins, Jr., Esquire
One Rockefeller Plaza
New York, N. Y. 10020
Counsel for Petitioner

Theodore E. Wolcott, Esquire
36 West 44th Street
New York, N. Y. 10036
Counsel for Respondents

The Solicitor General
Department of Justice
Washington, D. C. 20530

Edwin Longcope, Esquire
26 Broadway
New York, N. Y. 10004
Counsel for the United Kingdom of Great Britain and Northern Ireland

Alfred C. Clapp, Esquire
744 Broad Street
Newark, N. J.
Counsel for the Republic of Italy

Stuart M. Speiser, Esquire
200 Park Avenue
New York, N. Y. 10017
Counsel for Arnold Holtzman